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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,292

09/20/2005

Herbert Kurz

18840

1901

272

7590

09/12/2006

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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/550,292

Applicant(s)

KURZ ET AL.

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/20/05</u>   | 6) <input type="checkbox"/> Other: ____                           |

***Claim Rejections - 35 USC § 112***

Claims 1-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 15 "positioning element" should be either – positioning elements— or –one of the positioning elements--, since line 10 claims "positioning elements".

In claim 2 line 5 "cylinder drum" should be –cylinder block--, to agree with claim 1 line 2. In claim 2 line 3-5 "the first positioning device comprises a pivoting guide curved about an intersection between the longitudinal center axis of the drive disc and the cylinder drum" appears to be wrong. Claim 1 claims that "a first positioning device with positively cooperating positioning elements" (line 10) and "the positioning element...is offset transversely to the guide center axis in the oblique plane" (line 15-16), which would suggest that the first positioning device is pin 19 a or hole 19b. The pin and the hole has a curved surface but it is curved about its axis, not the axis of either the drive disc (7) or the axis of the cylinder block (12). The first positioning device cannot be element 16a, since it is not offset from the cylinder axis.

In claim 15 line 10 "and in its center region" should be deleted, since it is repeats the previous phrase.

Claim 18 does not appear to further limit claim 15, since the raised guide surface of claim 28 is included in the limitation that the guide surface is a circular arc shape of claim 15.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5, 7, 8 and 15-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by either Moya or Gollner. Moya discloses an axial piston machine comprising a drive disc (6) and cylinder block (8) rotatably mounted relative to one another about longitudinal center axis which extend obliquely to each other in an oblique plane; a cam disc (18) having an arc shaped guide element facing and supporting the cylinder block, and having a guide center axis coaxial with the cylinder block axis; the cam disc having a first positioning device with a positioning element (25) arranged offset to the guide center axis. Gollner has elements similar to Moya, except that the guide element is a pin (fig 1) connected to a second pin (8).

Claims 1, 3-8 and 15-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wiggermann. Wiggermann discloses an axial piston machine comprising a drive disc (32) and cylinder block (7) rotatably mounted relative to one another about longitudinal center axis which extend obliquely to each other in an oblique plane; a cam disc (34) having an cylindrically shaped guide element facing and supporting the cylinder block, and having a guide center axis coaxial with the cylinder block axis; the cam disc having a first positioning device with a recess (spur gear grooves 41) arranged offset to the guide center axis and interacting with an adjusting pin (of rack 45).

### ***Conclusion***

Claims 9-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

A handwritten signature in black ink, appearing to read "F. Daniel Lopez", is written over a horizontal line.

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
September 5, 2006